

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 vs.)
) CRIMINAL NO.: 3:18-CR-25-1
 BENJAMIN DRAKE DALEY,)
)
 Defendant.)
)
)
 _____)

FTR Transcript of Proceedings - Detention Hearing
Before the Honorable Joel C. Hoppe
December 3, 2018
Charlottesville, Virginia

For the Plaintiff:

CHRISTOPHER ROBERT KAVANAUGH, AUSA
United States Attorneys Office
255 West Main Street, Room 130
Charlottesville, Virginia 22902
434-293-4283
christopher.kavanaugh@usdoj.gov

THOMAS T. CULLEN, AUSA
United States Attorneys Office
310 First Street, SW, Suite 906
Roanoke, Virginia 24011
540-857-2901
thomas.cullen@usdoj.gov

Transcribed by Mary J. Butenschoen, RPR, CRR
Federal Official Court Reporter
Roanoke, Virginia

For the Defendant:

LISA M. LORISH, FPD
Federal Public Defenders Office
Western District of Virginia
401 E. Market Street, Suite 106
Charlottesville, Virginia 22902
434-220-3388
lisa_lorish@fd.org

* * * * *

INDEX OF WITNESSES

WITNESSES ON BEHALF OF THE GOVERNMENT:	PAGE
--	------

(NONE)

WITNESSES ON BEHALF OF THE DEFENDANT:	
---------------------------------------	--

JOAN DALEY

Direct Examination by Ms. Lorish	7
Cross-Examination by Mr. Kavanaugh	15
Redirect Examination by Ms. Lorish	21

* * * * *

INDEX OF EXHIBITS

EXHIBITS ON BEHALF OF THE GOVERNMENT:		
---------------------------------------	--	--

EXHIBIT	Marked	Admitted
1-18		22

EXHIBITS ON BEHALF OF THE DEFENDANT:		
--------------------------------------	--	--

EXHIBIT	Marked	Admitted
(NONE)		

1 (Proceedings commenced at 1:14 p.m.)

2 THE COURT: Good afternoon.

3 COUNSEL: Good afternoon, Your Honor.

4 THE COURT: Would the clerk please call the case.

5 THE CLERK: Yes, Your Honor. This is Criminal
6 Action Number 3:18-cr-25. *United States of America v.*
7 *Benjamin Drake Daley*, defendant number 1.

8 THE COURT: All right. Is the government ready to
9 proceed?

10 MR. KAVANAUGH: Yes, Your Honor.

11 THE COURT: And is the defendant ready to proceed?

12 MS. LORISH: He is, Your Honor.

13 THE COURT: Ms. Lorish, this is your motion, and if
14 you want to clarify what the procedural posture is of the
15 motion.

16 MS. LORISH: Yes, Your Honor. So as the Court is
17 aware, Mr. Daley appeared originally in the arresting
18 jurisdiction in California, and, though he did not make any
19 requests for release at that time, a detention hearing was
20 held and the magistrate judge there made findings supporting
21 detention.

22 He is now seeking to reopen that detention hearing
23 here pursuant to, essentially, a combination of 18 U.S.C.
24 3142(f)(2) that allows a judicial officer to reopen a bond
25 hearing, and also the statute -- sorry, I've got lots of

1 papers here today, Your Honor. 18 U.S.C. 31 -- sorry,
2 3145(b). We also believe Federal Rule of Criminal Procedure
3 40(c) supports this Court reviewing the evidence today in
4 support of his request for release.

5 I think at this point the government is not opposing
6 proceeding before this Court, but I'll let Mr. Kavanaugh speak
7 for himself. In the event that there is any furthering
8 question about whether this is the right forum to proceed, we
9 at least ask the Court to take evidence today, what we have
10 out of town witnesses present.

11 THE COURT: All right.

12 MS. LORISH: Thank you.

13 THE COURT: All right, Ms. Lorish. Mr. Kavanaugh?

14 MR. KAVANAUGH: Your Honor, I have a couple of
15 clarifications, or at least from the government's perspective
16 is that it's not that we -- that the government didn't seek
17 his release. It's that the government, in their defense,
18 submitted on the record after the government's argument in
19 Central District of California, which we believe -- don't mean
20 to quibble, but we think it's a small distinction. We do feel
21 and maintain that our law as laid out in our memorandum is
22 correct, and if I'm completely honest it wasn't until I was in
23 front of Your Honor in another matter where I heard Your Honor
24 mention that typically where there's a detention hearing
25 somewhere else that Your Honor doesn't take up the detention

1 hearing unless there's a change in circumstances. And I
2 again, to look at the law and some of the cases that are
3 behind it, *Cisneros* from the Tenth Circuit as well as *Cannon*
4 from the Eastern District of Virginia kind of seem to
5 continuously be cited. It was cited by the defendant in their
6 brief, and it appears to us that still the -- both of those
7 cases stand for the proposition that a reopening of the
8 detention hearing under 3142(f) by its terms is only for the
9 original magistrate who made the decision.

10 That being said, is that I -- notwithstanding the
11 fact we believe that the proper forum is in front of Judge
12 Moon, we're still happy to proceed for the detention here in
13 front of the Court if that's what the Court prefers.

14 THE COURT: I think if it's an appeal, certainly
15 that's in front of Judge Moon. If it's -- if it's reopening
16 to allow new evidence -- and I would note from the California
17 bond report I think Mr. Daley's parents didn't provide
18 information for that, and as I understand it now part of the
19 defendant's bond plan is -- from the probation officer is that
20 his parents are here and in support. And it seems like
21 there's at least some new information.

22 I think you're -- I think you're right that any
23 legal issues I think would have to be appealed rather than
24 reconsider those. I don't think that's a new -- you know, a
25 new circumstance. So it's like the basis for holding a

1 detention hearing I would think would be a -- would be
2 something that would need to be appealed rather than reargued
3 to a magistrate judge.

4 MR. KAVANAUGH: In any event, we have no opposition
5 to moving forward today, Your Honor.

6 THE COURT: Okay. All right.

7 Ms. Lorish, do you want to make any opening
8 statement or do you want to go ahead and start calling
9 witnesses?

10 MS. LORISH: Only to clarify that I'm not going to
11 argue regarding the basis for detention hearing. You know, I
12 submit that was in the written briefs and understand the Court
13 finds that that is in the nature of an appeal that would have
14 to be taken up with Judge Moon, and we'll just present the
15 release plan for Mr. Daley today, and I'll be calling his
16 mother, Joan Daley, and I would just like to go ahead and do
17 that now.

18 THE COURT: Okay.

19 MS. LORISH: So Ms. Daley?

20 THE COURT: Ms. Daley, if you would come over to the
21 seat, but before you sit down please raise your right hand.

22 JOAN DALEY, CALLED BY DEFENDANT, SWORN

23 THE COURT: You may be seated.

24 ///

25

DIRECT EXAMINATION

BY MS. LORISH:

Q All right. Why don't you share with the Court your full name.

A It's Joan Daley.

Q And how do you know the defendant?

A He's my son.

Q What state did you fly in from to be here today for this hearing?

A Oregon.

Q Did you come with anybody else?

A Yes, my husband Dan.

Q And is he here in the courtroom today?

A Yes, he is.

Q And, Oregon is the state where you currently reside?

A Yes, we do.

Q And we're deliberately not going to use the name of the city that you live in here in open court today for privacy reasons; is that correct?

A Correct.

Q But you did have the opportunity to speak with someone from pretrial services here from the Western District of Virginia on the phone prior to today's hearing; is that correct?

A Correct.

1 Q And you gave them your full address and information?

2 A Absolutely.

3 Q And then you again spoke with someone from pretrial
4 services today before the hearing here in person --

5 A Correct.

6 Q -- and confirmed all that information.

7 How long have you lived at that address that you provided
8 to probation in Oregon?

9 A 25 years.

10 Q And is that the address where Ben grew up?

11 A Yes, it is.

12 Q What do you do for employment now?

13 A Well, my husband and I run a construction company
14 together, and I work from home with also some additional
15 selling that I do from my house, a clothing and jewelry
16 business.

17 Q Is that a construction company that you own?

18 A Yes.

19 Q With your husband?

20 A Yes.

21 Q Are there any other owners?

22 A None.

23 Q And your husband and you are willing to employ Ben with
24 that construction business were he to be released from this
25 Court; is that correct?

1 A Absolutely.

2 Q And that would be full-time employment?

3 A Yes.

4 Q How would Ben get to work every day?

5 A Well, he could easily go with my husband in a truck every
6 day and back.

7 Q Okay. And when did Ben leave home? When did he move
8 away from your residence in Oregon?

9 A It's been about seven years at 17-and-a-half. He was
10 almost 18.

11 Q Okay. And did Ben have a drug problem in high school?

12 A Yes, he did.

13 Q What did you do to help him with treatment with that drug
14 problem?

15 A Well, we removed him from our house at 17. That was his
16 first -- that's when he left the house, and we put him through
17 a drug therapeutic boarding school, boys boarding school.

18 Q And did you do that -- was he in favor of that or did you
19 force him?

20 A No, against his will.

21 Q So you put him into a boarding school. Did you pay for
22 any other treatments?

23 A Yes. He went to -- the first one wasn't successful, and
24 so we -- and he was not challenged, so we put him through two
25 more until we finally got it right, and we did.

1 Q Ultimately, what do you know about Ben's sobriety
2 today?

3 A That he's, at 25 years old, five years sober and worked
4 very hard at it and feel very good that he's solid in his
5 sobriety.

6 Q When Ben ultimately settled then after he finished drug
7 treatment, he settled in LA; is that correct?

8 A Yes, he did.

9 Q And as far as you know he's been living in the Los
10 Angeles area since then?

11 A Yes.

12 Q How much contact -- of course understanding that things
13 change from week to week, but approximately how much contact
14 have you had with him over the last six-and-a-half, seven
15 years that he's been in LA?

16 A A couple of times -- at minimum, two or three times a
17 month. Usually up to probably once a week.

18 Q Is that usually by phone?

19 A Yes. And visits, whether we would visit, but that was
20 only a couple times a year. But we would speak to him at
21 least, you know, on the phone two to three times a month.

22 Q Okay. At some point in 2017 Ben asked you for help
23 booking a flight to Charlottesville; is that correct?

24 A That is correct.

25 Q And what did you know about why he wanted to come to

1 Charlottesville?

2 A Honestly, we -- at that time I think that was the
3 first -- if not the first or second trip Ben took by himself,
4 and we -- what we knew of it is that he had a girlfriend back
5 there, or a girl that he was close with, that he wanted to
6 see. And we saw it as an opportunity for him to see more than
7 just Los Angeles. He had always lived either in Oregon or in
8 Los Angeles, and it was, we hoped, to be a broadening
9 experience for him to see other parts of the country.

10 Q Did you know about the Unite the Right rally?

11 A Definitely not.

12 Q Did you know there was likely to be violence at that
13 rally?

14 A Absolutely not.

15 Q But you found out about that afterwards.

16 A Yes.

17 Q And how did you find out about that afterwards?

18 A Well, I -- I believe what happened, Ben called us, got me
19 on the phone from Washington, DC, and sounded disturbed and
20 upset, and -- and he explained what had happened. And I think
21 by then we had seen the news. And we discussed that his
22 ticket was -- he was in DC, he was seeing a girl, and
23 basically, you know, I said why would you go back there.
24 There's so much trouble there right now, don't -- don't. It
25 seemed like not a safe place. And I suggested that we help

1 him fly straight from DC to our -- to his home at that time,
2 which was still in Los Angeles.

3 Q So the original return point was from Charlottesville?

4 A Yes.

5 Q And you helped him change --

6 A I encouraged him to not, because it -- it seemed like a
7 not safe place to go after that new information.

8 Q You helped book -- you booked the flights for him, but
9 who ultimately paid for the flights?

10 A Ben paid for them.

11 Q He paid you back?

12 A Yes, yeah.

13 Q And so I'm going to ask you a few questions about what it
14 would look like if Ben was released to live at your home.

15 A Okay.

16 Q Does anybody else live at your home besides you and your
17 husband?

18 A No.

19 Q And is this the home that you have lived in for 25
20 years?

21 A Yes.

22 Q And you own?

23 A Yes.

24 Q And -- and we've talked a bit about what it means to be a
25 third party custodian --

1 A Uh-huh.

2 Q -- you and I have. And if the Court were to consider
3 that today, you would hear a lot more instructions from the
4 judge about what that looks like.

5 A Okay.

6 Q But as a third party custodian you would be responsible
7 to listen very carefully to the orders that this Court would
8 give Ben while he's released on pretrial supervision, and
9 you'd be responsible to pick up the phone the first hint you
10 have that you think Ben is not complying with those orders.

11 Is that your understanding of what it would mean?

12 A Absolutely.

13 Q You'd be under a court order to do that.

14 A I have no problem with that whatsoever.

15 Q So you have no concern about ensuring that you would
16 report anytime that Ben violated the Court's orders.

17 A No, I -- I have no concerns, and I -- and I have
18 discussed this with Ben directly and my husband, yes.

19 Q And have you installed a landline in your home?

20 A Yes, we have.

21 Q And you just did that recently --

22 A Yes.

23 Q -- in anticipation that if Ben were released he would
24 likely be released on home electronic monitoring?

25 A I'm sorry, what?

1 Q That if Ben was released --

2 A Uh-huh.

3 Q -- he'd be released on home monitoring?

4 A Yes.

5 Q And you're aware that there will be some costs associated
6 with his home monitoring and of course flying back to
7 Charlottesville --

8 A Yes.

9 Q -- for any court hearings.

10 A Yes.

11 Q And you're prepared to assume the costs of those
12 things --

13 A We are prepared.

14 Q -- at least at this time so he can pay you back.

15 A Yes.

16 Q Okay. Let me just review my notes for one moment.

17 Are you aware of what Ben does right now to help maintain
18 his sobriety? Is he participating in any treatment?

19 A Well, he's -- he's been religious with his AA
20 involvement. He has a very strong support system down in Los
21 Angeles, and we are concerned that he doesn't have that right
22 now. It's even the point of the *Big Book* that he -- you know,
23 that he has with him at all times, he can't -- he doesn't have
24 it yet, as far as I know, in jail.

25 Q Would you be willing to provide transportation for him to

1 participate in AA meetings after he's released?

2 A Absolutely.

3 MS. LORISH: Okay. I don't have any further
4 questions for you at this time.

5 Oh, I should add one more question.

6 BY MS. LORISH:

7 Q You're aware that if the Court releases him it will
8 likely be with restrictions that he's not allowed to access
9 the internet?

10 A Absolutely.

11 Q Does that provide any concerns for you?

12 A None whatsoever.

13 Q So you would work with probation to ensure that any
14 devices that could access the internet in your home would be
15 password protected?

16 A Or removed.

17 Q Or removed entirely.

18 A Absolutely, a hundred percent.

19 MS. LORISH: Any questions the prosecutor may have
20 for you now. Thank you.

21 THE WITNESS: Okay.

22 CROSS-EXAMINATION

23 BY MR. KAVANAUGH:

24 Q Good afternoon, ma'am. My name is Chris Kavanaugh, and
25 I'm with the United States. I have a few questions for you.

1 A Okay.

2 Q I apologize for my voice today.

3 You're son is how old?

4 A He is 25.

5 Q Okay. And he has not lived under your roof for eight
6 years; is that correct?

7 A Seven and --

8 Q Seven?

9 A Yeah, roughly.

10 Q Seven-and-a-half, okay. And for the past five or so
11 years he's been living in the Los Angeles area; is that
12 correct?

13 A Seven years.

14 Q Seven years.

15 A Yeah, from 18 on he's -- seven years.

16 Q And where in California was he living at the time of his
17 arrest?

18 A At the time of his arrest? In the South Bay. The city
19 is Torrance, I believe.

20 Q Okay.

21 A Or Redondo Beach, I don't know. It's a fine line
22 there.

23 Q Do you know the address?

24 A Not off the top of my head, no, because we use a PO Box
25 always.

1 Q Okay. And Mr. Daley uses a PO Box; is that correct?

2 A My son?

3 Q Yes.

4 A Yes, sorry.

5 Q I'm sorry.

6 A I thought of my husband.

7 Q No.

8 A Ben uses -- had always had a PO Box.

9 Q Okay. So he does not, you know, receive mail at his own
10 personal address.

11 A No.

12 Q And during that seven-and-a-half years he had been living
13 on his own?

14 A Yes.

15 Q A couple of things that you stated about -- in your
16 direct testimony is that Mr. Daley asked you to book tickets
17 for him to fly to Charlottesville, correct?

18 A Uh-huh.

19 Q Is that correct?

20 A Yes.

21 Q Just has to be yes or no for the record.

22 A Oh, okay, yes.

23 Q And then he said that was to visit a girlfriend; is that
24 correct?

25 A Well, yeah, and to travel just to see a different part of

1 the country, you know.

2 Q Okay. And he did not tell you he was going to the Unite
3 the Right gathering.

4 A No.

5 Q So he lied to you?

6 A Well, you know, I don't know that it was called all that
7 then. And you have to understand this was a couple years ago,
8 but no. I just think it was vague why he was going. And
9 honestly we welcomed it because we saw it as -- you know, we
10 were concerned about some of his beliefs and felt like the
11 more he saw of our country the more rounded he would become.

12 Q What beliefs were you concerned about?

13 A Well, just -- just some concerning political beliefs,
14 things that we weren't -- he wasn't raised with that we didn't
15 understand and don't agree with.

16 Q And you said that it was vague. To clarify, vague to
17 you; is that correct?

18 A Well, yeah. I mean, at the -- that's the best I can give
19 you. It was somewhat vague. I know there was a girlfriend,
20 and, honestly, when you're 20 -- he was probably 23 at the
21 time who had traveled a great deal on his own, you know, and
22 was sober and doing what we saw were right things. It was
23 something that I saw as a healthy thing to do.

24 Q And so at no point in time did you know he was traveling
25 to come to the Unite the Right rally.

1 A No.

2 Q You also said that you booked the flights but he
3 ultimately paid you back; is that right?

4 A Yeah.

5 Q And Mr. Daley has a credit card, correct?

6 A Well, at that time I'm not sure. I honestly can't say.
7 I know he does now, but I don't know then.

8 Q So you're not aware of his financial accounts?

9 A No, he's been independent.

10 Q Has Mr. Daley ever expressed to you a concern about him
11 using his own card for things so that there's not a paper
12 trail?

13 A No.

14 Q You mentioned that you have a landline at your house and
15 also that you have access to the internet at your house,
16 right?

17 A Yes.

18 Q You also mentioned about how the -- Mr. Daley had been
19 in -- sorry, your son had been in AA, correct?

20 A Yes.

21 Q And isn't it true that his sponsor in AA is actually a
22 sympathizer to white supremacist views?

23 A I don't know his sponsor. I mean, I've -- he picks his
24 sponsor. We don't. We have met him since --

25 Q You have met the sponsor?

1 A Just recently.

2 Q Okay.

3 A And I would be concerned now, but I did not -- we didn't
4 meet him until just recently.

5 Q And if you could tell the Court, why would you be
6 concerned now?

7 A Well, because there was -- what little you speak -- we
8 spoke to him for maybe ten minutes. Because here we are, a
9 son in jail needing support for -- for his addiction with a
10 sponsor, and we don't have his phone number, so we get his
11 phone number by meeting him. And, you know, we're just -- it
12 was a little concerning, yeah. But, I mean, that's the extent
13 of our conversation, was his phone number.

14 Q Were any of your concerns related to his -- to the
15 sponsor's views as well?

16 A Well, I didn't speak to him long enough to know his
17 views. I had to surmise that from just a general appearance
18 and priorities that appeared to be, but I can't say that.

19 Q Ma'am, you touched on this today, but at some point in
20 time you realized that your -- or had concerns about your
21 son's beliefs, correct?

22 A Uh-huh.

23 Q And did you confront him about those beliefs?

24 A Well, we had a lot of conversations as any active parent
25 would do. Yeah, we had a lot of conversations.

1 Q And did you convince him to go on a different path or
2 separate himself from --

3 A We encouraged him to consider that this wasn't a healthy
4 choice and we didn't believe what he was, you know, saying.
5 We didn't agree with it, didn't support it.

6 MR. KAVANAUGH: Thank you. Those are all my
7 questions, Your Honor.

8 THE COURT: Ms. Lorish, anything else?

9 REDIRECT EXAMINATION

10 BY MS. LORISH:

11 Q If Ben is released to live in your home and you're
12 serving as a third party custodian as you indicated you'd be
13 willing to do, would he be welcome to express the kind of
14 views that you just discussed with Mr. Kavanaugh --

15 A No.

16 Q -- in your home?

17 A Not at all.

18 MS. LORISH: Thank you.

19 THE COURT: All right. Thank you, Ms. Daley.

20 THE WITNESS: Okay.

21 MS. LORISH: Thank you.

22 (Witness excused)

23 MS. LORISH: I don't have any other evidence, Your
24 Honor, just argument, but I don't know if the government
25 intends to put on evidence.

1 THE COURT: Okay. Mr. Kavanaugh, do you have any
2 evidence that you would like to to present?

3 MR. KAVANAUGH: Yes, Your Honor. We have -- not
4 through written testimony, but we have submitted 18
5 photographs to the court. I'm happy to make an argument on
6 the basis of 3142(g) factors and want the Court to review
7 those, but we do not have any sworn testimony to provide the
8 Court.

9 THE COURT: All right. And Ms. Lorish, you have
10 those photographs there?

11 MS. LORISH: I do, Your Honor.

12 THE COURT: All right. Do you have any objection to
13 me considering those?

14 MS. LORISH: I don't object to the consideration of
15 the photographs, Your Honor.

16 (Government Exhibit 1 - 18 marked and admitted.)

17 THE COURT: All right. Mr. Kavanaugh, do you want
18 to walk me through these exhibits?

19 MR. KAVANAUGH: Yes, Your Honor.

20 Your Honor, I was going to do so in addressing the
21 3142(g) factors. I understand this is the defense motion, so
22 I'm happy to respond to their argument or to do it just right
23 now, whatever Your Honor would like.

24 THE COURT: Well --

25 MR. KAVANAUGH: Or I can literally go page by page

1 through these and we can talk about each one. Or I can
2 provide a brief summary of them.

3 THE COURT: Ms. Lorish, I'll give you an opportunity
4 to respond to anything that Mr. Kavanaugh says in his
5 argument, so why don't we go ahead.

6 MS. LORISH: That's fine, Your Honor.

7 THE COURT: And you can present your argument,
8 Mr. Kavanaugh. You can discuss these photos in your
9 presentation.

10 MR. KAVANAUGH: Your Honor, so yes, I will be
11 talking about those photographs. Otherwise we would like to
12 proceed by proffer into our argument. And regarding 3142(g)
13 factors, it doesn't sound like Ms. -- I think the parties have
14 adequately briefed the bases for which we're requesting the
15 detention hearing under the fact that the defendant is a risk
16 of flight and then also he was charged with a crime of
17 violence. And which brings me to the very first 3142(g)
18 factor that is being the nature and circumstance of the
19 offense alleged here, that the defendant has been charged with
20 two crimes of violence, both legally as qualifying under the
21 Bail Reform Act as well as factually.

22 The defendant is charged with being a member and, in
23 fact, a founding member of the white supremacist organization
24 the Rise Above Movement which has been charged with traveling
25 with intent to engage in acts of violence in three places in

1 the indictment, which are Huntington Beach, California, on
2 March 25, 2017; Berkeley, California, on April 15, 2017; and
3 then, finally, Charlottesville on both August 11 and August
4 12, 2017.

5 And the evidence that we have, including some of the
6 photographs, is that the -- this organization would train in
7 preparation to engage in combat with their political foes, or
8 people they perceived to be their political foes, with
9 particular focus on minorities such as African-Americans,
10 Jewish persons, as well as women. And that for these charges
11 the defendant faces up to ten years incarceration.

12 With respect to the second factor under 3142(g), it
13 goes to the nature of the strength of the government's
14 evidence. In Government's Exhibits 1 through 4 that are
15 before the Court, those go to the nature of the organization
16 that the defendant is involved in. And, ultimately, what
17 their intent and purpose is in engaging in this organization,
18 one of the photographs shows that -- this is a photograph of
19 its members, including the defendant, When the squad is not
20 out smashing commies, on March 9 of 2018. It was a photograph
21 of them from their Twitter page wearing skull masks to
22 disguise their view -- to disguise their visage at places such
23 as they did in Berkeley.

24 Exhibit 3 is from March 20 of 2018 in which it shows
25 the defendant with a flag that says Good Night Left Side and

1 someone appearing to stomp on an individual below him.

2 This organization, in addition to training and --
3 for these political rallies as well as attending the political
4 rallies, they also engaged in extracurricular activities to
5 include book burning. And in Government Exhibit 4 it depicts
6 the defendant, as well as his co-defendant, Tom Gillen,
7 participating in a book burning in the summer of 2017 where
8 they are burning books such as *The Diary of Anne Frank*, *The*
9 *9/11 Commission Report* and a book *Trapped in Hitler Hell*.

10 That is kind of just background for the organization
11 for the Court that is at the center of the conspiracy charge
12 and some of the evidence that goes to that conspiracy in that
13 organization.

14 Moving on next is the first event that occurred in
15 the indictment, is Huntington Beach on March 25 of 2017 when
16 the defendant was still on probation for his prior offense.
17 Is that on that day the defendant, as well as additional
18 co-conspirators, Robert Rundo, Tyler Laube, Robert Bowman, and
19 Michael Miselis, all met at Huntington Beach on March 25 of
20 2017. At that location it was much like or similar to what
21 occurred in Berkeley. It was a pro-Trump rally and there were
22 counter-protesters that showed up. At one point about three
23 to five counter-protesters start to walk away or walk up the
24 beach away from the scene, whereas the defendant and his group
25 pursued them and a violent confrontation ensued. The most

1 notable of the confrontations did not include the defendant.
2 Rather, it included his co-founding member, Robert Rundo, in
3 which he tackled a counter-protester, punched him and took him
4 to the ground, and then punched him while he was
5 on the ground.

6 And the reason that this event is so important is
7 this is actually kind of what put Rise Above Movement on
8 the -- on the map, and the defendant recognized this and
9 celebrated this as -- in text messages the very next day.

10 This event was captured on photos and video, and in
11 a photo that shows Robert Rundo punching and pummeling this
12 counter-protester that was pasted to the front page of The
13 Daily Stormer, which is believed to be -- or known to be an
14 alt-right website, and the defendant text messages his friends
15 to include Michael Miselis to say, you know, Front page of the
16 Stormer that we -- we did it. To which Mr. Miselis replies
17 like, Great job, we've achieved celebrity status.

18 And this is one of the very first events that
19 ultimately led to what happened in Berkeley and in
20 Charlottesville. And after this happened in Huntington Beach,
21 there's a shift in which you can see that the defendants moved
22 their focus to Berkeley of April of 2015.

23 And one of the things that was interesting with
24 Ms. Daley's testimony is that the defendant used his own debit
25 card in preparation for April 15 to purchase and rent an

1 11-passenger van for himself as well as as many as ten other
2 R.A.M. members to travel six hours from Southern California
3 all the way to Berkeley to engage in subsequent acts of
4 violence. The defendant's credit card -- and these are from
5 records from airport van rental which the government has
6 received and has shown to defense counsel, is that -- has the
7 defendant's credit card but does not have his name. And,
8 rather, another co-conspirator by the name of Aaron Eason
9 ultimately rented that van, and that the text messages
10 indicate that Michael Miselis and that they all planned to go
11 to Berkeley for this purported political rally and that they
12 had been trained, had several training sessions, to prepare
13 for that political rally.

14 And Government Exhibit 5 shows the defendant
15 actually when he's at that political rally on April 15, 2017.
16 And in this is a photograph that was taken from -- this is
17 available on open sources, but this photograph itself is from
18 the defendant's own Facebook account, and he identifies
19 himself as the person on the left in the skull mask as they
20 are taking the anti-fascist banner of a professor, female
21 professor, that is in Northern California. The defendant is
22 in a conversation about this and identifies himself in the
23 photo and says that -- specifically that we stole her banner
24 at the April 15 riots and that, "My boy supposedly kicked her
25 in the face." That's the defendant's quote from his own

1 Facebook about what happened on April 15 in the aftermath of
2 it.

3 The riots at Berkeley, they centered in two places.
4 Well, first, they started at the Martin Luther King Civic
5 Center Park, or in front of the civic center, where they are
6 engaged in acts of violence back and forth where there was one
7 side of counter-protesters and one side of which the defendant
8 was on, and there were objects being thrown back and forth.
9 And they were separated by two chief construction orange
10 fences, and there were police officers that were between them.
11 And through eyewitness testimony, through video that was on
12 top of the buildings looking down at the civic center, as well
13 as statements admitting on the R.A.M.'s Twitter account, is
14 that they were the first ones to cross that barrier onto the
15 side where the counter-protesters are, indicating these are
16 not in any way acts of self-defense, but they were the first
17 persons to be able to escalate and cross that barrier to
18 engage in acts of violence. And the defendant is seen on
19 video doing that.

20 After these acts of violence continued there in the
21 park, they spill on into the street in which the defendant is
22 part of a group of individuals, as well as his co-defendants
23 in the case, all three of them, Thomas Gillen, Cole White, and
24 Michael Miselis. And as the counter-protesters are leaving,
25 all four of those defendants, including Mr. Daley, follow and

1 chase after them. And at one point the defendant runs and
2 kicks one of the counter-protesters as that person is leaving.

3 And this brings us up to the next one that is
4 charged in the indictment, that being the riots that occurred
5 in Charlottesville on August 11 and August 12. The defendant
6 and fellow members all purchased tickets to come here to the
7 United States -- to come here to Charlottesville. According
8 to the testimony today, it wasn't the testimony himself who
9 purchased the ticket, but, rather, it was his mother that
10 was -- who purchased the ticket herself.

11 And the government thought that that was
12 particularly interesting because the defendant sends a text
13 message to Michael Miselis. Michael Miselis had already
14 arrived in Charlottesville, was at the Walmart buying torches
15 and helmets, and the defendant specifically advises him make
16 sure not to use your card, use cash, indicating that the
17 defendant did not want his own card or anybody's card
18 affiliated with what was happening.

19 In advance of those April -- August 11 riots, the
20 defendant enters -- the defendant knew and evidence is going
21 to show that the defendant knew that violence was to be
22 expected in Charlottesville as he -- he entered into the chats
23 of discord, and on discords specifically in which his name is
24 identified as Ben Daley, says that he was looking for lodging
25 for three guys who were experienced at these types of events.

1 And then, quote, All were in the Berkeley riots. Which is
2 relevant to his intent of what he expected Charlottesville to
3 be and why he was coming.

4 He called up a co-defendant in which he said that
5 Charlottesville was going to be like Berkeley again and that
6 it was going to be the event of the year and sent text
7 messages, again, in advance before coming to Charlottesville
8 to Michael Miselis that Cole White was going to be coming with
9 them and that he's an excellent fighter and that he was stoked
10 to have him with them, all relevant to his intent prior to him
11 traveling.

12 Once he arrived here in Charlottesville, he went to
13 the Walmart on 29 between here and the airport, purchased
14 white tape as well as a knife and other items, and that
15 evening is confirmed on video and on photo as being present at
16 the tiki torch rally, at the tiki torch rally where, as the
17 Court is well aware from the allegations and of the
18 indictment, Chance of blood and soil and Jews will not replace
19 us and black lives matter occurred, as this large group
20 surrounded students and community members at the Thomas
21 Jefferson statue.

22 And the defendant ultimately talked about how they
23 had them completely surrounded. And he did so on his own
24 Facebook in which he talked about how he -- there was no need
25 for the release of OC spray, or chemical spray that evening,

1 because they had the students and community members completely
2 surrounded.

3 The defendant admits on Facebook that he assaulted
4 five people that evening, and the government has developed
5 further evidence that he told somebody afterwards that he was
6 in a -- he assaulted people in the melee, then he took a
7 break, and then went in to join for more and lamented that he
8 needed to stop punching people in the head because of his hand
9 and it was where he was going to break his hand.

10 Which brings us to the morning of August 12 when the
11 defendant actually wraps his right hand or his hands in
12 preparation the government would -- to engage in combat much
13 like Thomas Gillen and Michael Miselis. And just as in
14 Berkeley where they were one of the first people to cross that
15 barrier, so too in Charlottesville the defendant was part of a
16 group that set off one of the very first, if not the first,
17 act of violence on the morning of August 12. That was on
18 Second Street between High and Jefferson Streets in downtown
19 Charlottesville. The defendant is captured on videos and
20 photographs of those actions, some of which were in the
21 criminal complaint.

22 I'm going to point the Court to Government's
23 Exhibits 6 through 10. In Government Exhibit 6, this is the
24 defendant who is punching a African-American counter-protester
25 who had blocked his path or blocked the path of people that he

1 was with.

2 In Government Exhibit 7 is the defendant assisting
3 Cole White as Cole White was headbutting a female protester
4 throwing her out on the street who was in their way.

5 In Government Exhibit 8 you'll see the defendant on
6 the left side of the photograph where he is attempting to wrap
7 his right hand around the neck or grab the female protester by
8 the neck.

9 And Government Exhibits 9 and 10 which show the
10 defendant strangling a separate female protester who was
11 present on the streets that day. And these photographs are
12 particularly important for a couple of reasons. Number one is
13 that the defendant later -- well, I won't get ahead of myself.
14 We'll talk about that in the afternoon. But immediately after
15 this altercation, Your Honor, as the defendant and his
16 codefendants made their way through this group, they were
17 followed by a videographer with *National Geographic*. And as
18 they went on the neighboring street, which I believe was First
19 Street -- they turned around on High Street and then went down
20 First Street -- the defendant looked at the camera and flipped
21 the middle finger to the camera and then, giving a
22 throat-slashing gesture as in Government Exhibits 11 and 12,
23 said, "Time's up." And then as he's giving the throat-slashing
24 gesture in Government Exhibit 12 says, "All of you."

25 Later that day the defendant is on video footage --

1 even particularly the video footage captured by the GoPro that
2 Michael Miselis is wearing shouting into the crowd, F these
3 Jews, and again doing the throat-slashing gesture as well.

4 In the aftermath of this, Your Honor, there is a
5 couple of things that I want to point out. The defendant's
6 text messages, as well as other statements made by the
7 defendant, is that when these photographs surfaced,
8 particularly the one of the woman strangling -- the one of the
9 female he was strangling, he sent them to a -- to Michael
10 Miselis on his text messages, and Michael Miselis replied
11 back: LOL at you choking a B-I-T-C-H.

12 To which the defendant -- and hopefully no one finds
13 these photographs. To which the defendant replied: F these
14 hoes, 24 -- and then it says 24/7 THOT patrol. That's THOT,
15 T-H-O-T, which is a derogatory reference to a female that
16 stands for an acronym That Hoe Over There. Celebrating that
17 they had attacked these females on the streets of
18 Charlottesville.

19 In rehashing additional footage, the defendant
20 also -- once he has gone back to California, the government
21 has received evidence and expects the evidence at trial to
22 show that he is -- on August 22, just a couple of weeks
23 afterwards while Charlottesville was still in the news, is
24 that he goes to a bar and has a conversation with an
25 individual who he was trying to recruit. And he shows the

1 individual a photo that was not seen and talks about how his
2 hand was hurting. Said that, We go to these events to wreak
3 havoc, to cause violence.

4 He said -- one of the other things he says, We're
5 going after feminists now, or feminists are one of their
6 targets now, which for the government is consistent with
7 attacking the female protesters that had occurred on August
8 12.

9 Next I'd like to move on to the -- if there's any
10 other questions regarding the weight of the evidence, I'd be
11 happy to move on to the history and characteristics of the
12 defendant, Your Honor.

13 As I've noted before is that during part of this
14 offense -- not for the Unite the Right rally but for part of
15 this offense on August -- for Huntington Beach as well as
16 Berkeley is the defendant was on probation at the time of the
17 offense from the government's records and from his
18 conversations with the probation office, is that the
19 defendant's probation ran all the way until May 22 of 2017.
20 So his membership in the Rise Above Movement, as well as the
21 overt acts from Huntington Beach as well as Berkeley, all fell
22 within the time when he was on probation showing that he
23 committed part of the offense while on probation.

24 He does have -- that was for a prior conviction for
25 a criminal conviction for carrying a concealed weapon for

1 which he received seven-day sentence and then the three years
2 of probation.

3 He does have two failures to appear and that is with
4 respect to a traffic offense, but we don't believe that is any
5 indication of it being -- doesn't mitigate it much. He has
6 two prior failures to appear. And they had \$10,000 in cash in
7 his residence when he was arrested on October 2 of 2018.

8 And finally is that when he was arrested, is that
9 when the FBI agents went to interview him, he did invoke but
10 asked what these charges were about. And when told that they
11 were from Charlottesville, he referred to Charlottesville
12 judicial system as a kangaroo court. In fairness to the
13 defendant, it's unclear whether he was referring to the state
14 system or the federal system, but, nevertheless, was
15 indicative of his view of the judicial system in any event.

16 In May of -- April and May of 2018 the defendant as
17 well as former R.A.M. -- other R.A.M. members traveled to
18 Europe, Germany, Italy, and Ukraine. At all locations they
19 met with people affiliated or associated with the white
20 supremacist movement in all three of those. Specifically, in
21 Germany they attended, on Adolf Hitler's birthday, the sword
22 and the shield festival, as well as one of the -- an MMA
23 fighting -- or MMA fighting event where Robert Rundo
24 participated.

25 In the Ukraine they -- Your Honor, as part of that,

1 on a ledger or a notebook that was found on Government Exhibit
2 14 in the defendant's apartment indicating that the Europe
3 trip was not for vacation; rather, it was part of one of the
4 goals for the Rise Above Movement organization, as the
5 defendant lists it as one of the goals and puts a check box
6 right beside it.

7 Government Exhibits 15 and 16 are from the
8 defendant's time in Ukraine, specifically Kiev, where in
9 Government Exhibit 15 he is making the throat-slashing gesture
10 again with insignia in the background that indicates the Azov
11 Battalion. Azov Battalion is a wing or former wing of
12 Ukrainian National Guard which was notorious and known for its
13 white supremacist views and neo-Nazi ideology.

14 And then again on Government Exhibit 16 the
15 defendant is posing in front of the insignia for the Azov
16 Battalion as well as giving the Hammerskin salute.
17 Hammerskins are known as a -- they are a western violent white
18 supremacist organization with a presence in Southern
19 California.

20 And then for the time in Italy is that the defendant
21 spent several days at the CasaPound, that is with the
22 neo-fascist political party in Italy as well.

23 So the defense have -- and the defendant himself has
24 international contacts in this case which are relevant to
25 assessing his bond. And in fact, one of his co-conspirators

1 and a founding member of -- one of the founding members of the
2 Rise Above Movement, Robert Rundo, fled or attempted to flee
3 to the Ukraine after the defendant's arrest in this case, not
4 once, but twice, and ultimately successfully fled into --
5 across the border into Mexico and into Elsalvador. So one of
6 the co-conspirators in this case has already fled apprehension
7 from law enforcement authorities.

8 Fourth and finally, Your Honor, is the nature and
9 seriousness of danger to any person in the community, and I
10 will not reiterate some of the things I have already talked
11 about, which nevertheless speak to this, but I also want to
12 add that the -- in the defendant's search warrant I've
13 included two photographs here in Government Exhibit 17 and 18
14 are skull masks, as well as incendiary or smoke grenades. And
15 in Government Exhibit 18 there was national socialist or Nazi
16 paraphernalia, a 12 gauge shotgun, a loaded .357, a knife with
17 a swastika insignia, a go bag with masks and scarf and
18 goggles.

19 Further evidence from the defendant's Facebook also
20 pauses concern for the defendant's -- provides cause for
21 concern for the defendant's dangerousness. Specifically, in
22 August to November of 2017 the defendant engaged in an online
23 conversation with an individual in which they talk about many
24 things, the James -- the attack that was committed by James
25 Fields, for which he's been charged in a federal hate crime

1 indictment, is that the defendant -- they had shared a meme
2 that showed the Challenger by James Fields, and it said:
3 Challenger time, commie swine.

4 And that's less of a concern, but it was the
5 defendant's response that was a concern, is that the defendant
6 said that privately he enjoys that humor but publicly he
7 doesn't think it's wise. Why? Because, quote, You're not
8 living the 14 sitting in the joint.

9 The 14 are 14 words that were espoused by Adolf
10 Hitler that is the mantra of many people in the white
11 supremacist movement that we must secure the existence of our
12 people and a future for white children. And that the
13 defendant said that you can't live the 14 while you're sitting
14 in the joint. And he then says that a movement needs to be
15 much -- needs to be big before it can get to that extreme to
16 be effective. So his concern with the James Fields attack was
17 that it was premature, not that it was wrong, when you look at
18 this evidence.

19 And the person responds to him that a movement needs
20 to be -- that absolutely agreeing: That's why just flash mobs
21 and outreach, to which the defendant replies back:
22 Absolutely.

23 And then also addressing the magistrate judge in
24 Central District of California, also noted that one of the
25 things that speaks to the defendants' danger in this case is

1 their access to the internet, which is very difficult to
2 police. And specifically, that -- the magistrate judge said
3 that much of the danger from the defendants and others come
4 from their access to the internet and their ability to spread
5 their message, as it were, and that can't be controlled if
6 he's released on any kind of bond.

7 And that there were -- also clear in the defendant's
8 Facebook are other groups and other individuals seeing their
9 actions in Charlottesville and at Berkeley and asking how can
10 I get involved, and how can I create a group just like that.
11 The defendant advising and promoting them on how to do that.

12 So Your Honor, in conclusion, all of the factors we
13 believe strongly support request for detention in this case.
14 For all four -- all other three defendants in this case, the
15 magistrate judge in California as well as Judge Moon all ruled
16 that there's no combination of conditions that can assure the
17 safety of the community, and in some cases they were returned
18 to court. And for the co-conspirators in California, the
19 California case, the magistrate judge there found the same as
20 to all four of those defendants. And we just respectfully
21 request that this Court find the same.

22 THE COURT: All right. Ms. Lorish?

23 MS. LORISH: Thank you, Your Honor.

24 THE COURT: Let me tell you this: I do have a --
25 what should be a short call at 2 o'clock. Do you want to just

1 take a break now or do you want to start? Not to interrupt
2 you and just --

3 MS. LORISH: I'd like to say I'd be less than five
4 minutes, but it's unlikely to be true. Maybe we should take a
5 break now.

6 THE COURT: Why don't we do that because I want to
7 give you an opportunity to present your full argument, not cut
8 you off.

9 MS. LORISH: Thank you.

10 THE COURT: So we'll take a short recess.

11 THE MARSHAL: All rise.

12 (A recess was taken from 2:00 p.m. to 2:29 p.m.)

13 THE COURT: Ms. Lorish, you can go ahead.

14 MS. LORISH: Thank you, Your Honor.

15 So first I want to start out by summarizing what the
16 release plan is that Mr. Daley is proposing today. And so as
17 the Court can no doubt discern from the questions I asked his
18 mother, Mrs. Daley, earlier, and also the filings in this case
19 what we're proposing is that he be released on home
20 confinement and electronic monitoring conditions to the
21 residence of his parents in Oregon, and who would also both
22 agree to serve as third party custodians in this case to
23 ensure the defendant complied with the conditions of his
24 release, which we would expect would allow him to leave the
25 residence only for employment, which would be where his father

1 would drive him to and from employment with his father. And
2 otherwise only to leave the home for AA meetings and then also
3 for any religious services. And as an additional condition of
4 release that he would not have any access to the internet and
5 whatever other conditions, of course, the Court or the
6 government might suggest in addition to that would be the
7 baseline proposal.

8 And so first with respect to the -- that plan, we
9 would suggest that this release plan distinguishes Mr. Daley's
10 case from the co-defendants in this case who have been
11 detained so far as well as the defendants out in California.

12 I can't speak with perfect accuracy about all the
13 California defendants, but I do believe that no other
14 defendants in this Western District of Virginia indictment
15 have proposed a third party custodian proposed living with
16 relatives far from Los Angeles where essentially all this
17 alleged organizing and conspiring is supposed to have
18 occurred. And so I think that is a distinguishing factor and
19 I think that Mrs. Daley -- I think we could trust
20 Mrs. Daley -- this Court could trust Mrs. Daley to pick up the
21 phone and to report then in the event that he did not comply
22 with one of the Court's orders, and that's an important
23 factor.

24 So I think the Court has to consider then with that,
25 as a possible release plan, does that satisfy and provide some

1 reasonable assurance that Mr. Daley will come back to court
2 when his trial which is currently set in January, and will he
3 be a danger to the community in that interim period of time.

4 And so of course the government has -- we've allowed
5 the government to proceed by proffer today in providing a lot
6 of evidence to the Court -- well, not really -- I mean
7 proffered evidence. We have photographs. We're not conceding
8 that those are photographs that were taken at large and public
9 sources and are not conceding -- are not contesting that
10 Mr. Daley was present at these rallies in Berkeley and
11 Huntington Beach and also in Charlottesville, but as is the
12 case with -- anytime we select a small snippet out of one day
13 there's a lot of context that has not been provided by
14 proffer, and for every single photograph there would be
15 backstory that explains how Mr. Daley found himself to be in
16 the scene depicted in each photograph.

17 And so in general without getting into the
18 details --

19 THE COURT: Ms. Lorish, I'm not sure how that
20 backstory would explain or would help to explain his
21 circumstances considering he lived in California and the
22 government's proffer and sworn statements and the affidavits
23 submitted in support of the complaint would show that he
24 traveled from California and to participate in this rally and
25 was getting prepared for violent confrontations. And that the

1 statements on R.A.M.'s website really support that, that that
2 is part of that group's mission and what they -- what they go
3 about doing.

4 MS. LORISH: Well, what I think is relevant for the
5 Court to consider, Your Honor, is that at these -- so when the
6 defendant came to Charlottesville in August of 2017 he had
7 prior experiences of going to lawfully permitted rallies which
8 were pro-Trump rallies both in Huntington Beach and Berkeley
9 where there was a strong presence from, you know,
10 counter-protesters. And in fact, the presence was so strong
11 that the Department of Homeland Security, who studied those
12 rallies, cited that the kind of counter-protesters which they
13 called anarchists or Antifa presence was part of the reason
14 that violence was incited at those lawfully organized
15 protests.

16 And so I think it's -- of course we have the video
17 evidence of what happened in Charlottesville. But whether the
18 evidence is that -- is as uncontested as the government
19 suggests, that Mr. Daley traveled with the intent to incite a
20 riot versus to participate in a rally where there was a strong
21 presence from a counter-protest movement and was prepared for
22 the likelihood that there would be violence based on his prior
23 experiences, that's the difference. Coming to a riot where
24 you know there's likely going to be violence or coming to
25 incite a riot.

1 And so that's -- you know, it's -- the Court can
2 consider the evidence the Court has for what happened in
3 Charlottesville, but that's the only context I was planning to
4 offer for the background, Judge.

5 There were many people arrested in Berkeley,
6 Huntington, that were on either side of the protest and
7 counter-protest line, so the defendant's expectation was, yes,
8 there was likely going to be violence. And in fact, there
9 obviously was that day and on every participating side. So --

10 THE COURT: And I -- you know, I can't weigh into
11 that at this point, but, you know, the evidence in front of me
12 has statements from R.A.M. and pictures of Mr. Daley on their
13 website, and it's -- these statements are promoting violence
14 and promoting violence against groups with which it seems that
15 he disagrees. And so it's -- there is certainly evidence to
16 support that he came to Charlottesville with the intent to
17 engage in violence and was quite prepared to do so.

18 MS. LORISH: I think it's also relevant --

19 THE COURT: And I -- you know, what's -- the
20 question or the issue in front of me is, you know, are there
21 conditions that -- that I can -- that I could impose on him
22 that would keep him from -- and reasonably assure me that he
23 wouldn't engage in that sort of conduct while he is -- while
24 he is on bond.

25 MS. LORISH: And as to that question, there's no

1 evidence that Mr. Daley has participated at any political
2 rallies in the United States since August of 2017, or that
3 he's been involved in any other acts of violence or any other
4 assaults of any kind since August of 2017. The government has
5 obviously been aware and kind of watching him closely in the
6 intervening time period. He did travel outside the United
7 States, as there's been proffered evidence. There's no
8 violence associated with him in any of those travels. And so
9 I think the intervening time period of now 15 months is
10 relevant for the Court to consider.

11 It's also with respect to -- and on that point,
12 there have been political rallies that have turned violent in
13 those intervening time periods where many of the same groups
14 that participated here in Charlottesville on August 11 and 12
15 did show up. Mr. Daley and the individuals he associated with
16 in Los Angeles were not among those, in Portland or in other
17 cities in the last 15 months.

18 So I think this Court can have assurance that
19 Mr. Daley will come back to court. He has the financial
20 resources being offered by his parents to get him back here.
21 Can be assured through homeland kind of monitoring that he's
22 going to stay in Oregon away from these other individuals and
23 not participate in any future rallies of any kind or any
24 organizing online. And that should satisfy the Court.

25 His only criminal history at this point besides the

1 traffic offenses -- and while he did -- you know, he was
2 young. He didn't take seriously when he was supposed to
3 appear in court, but he had completely paid off those fines
4 and offenses now and took care of that traffic offense. He
5 did come to court for his concealed carry conviction. Came to
6 all those things. And, you know, the government alleges that
7 the tail end of that three years of probation was when some of
8 these activities were happening in California, but, you know,
9 from his probation officer's perspective in California he
10 completed all the terms of his probation and -- you know,
11 apart from these allegations now. And so he -- you know, and
12 the fact that a co-defendant attempted -- or co-defendant out
13 in California attempted to flee the country does not suggest
14 that, you know, Mr. Daley would do that. He doesn't have a
15 passport. He tried to renew his passport in the last year and
16 the government held it and never gave it back to him. All of
17 his cash was seized. He ran a cash business in California
18 which explains why he had cash in his residence. So he has no
19 financial means to flee.

20 And so we think all those factors together would
21 support his being released on very restrictive conditions.
22 Thank you, Your Honor.

23 THE COURT: All right. Mr. Kavanaugh, anything else
24 that you want to say?

25 MR. KAVANAUGH: Your Honor, very briefly is that

1 defendant Michael Miselis, his release plan also was to third
2 party custodians to his parents as well, and much like in that
3 case we maintain that, notwithstanding the efforts of the
4 parents, is that we still don't believe that there is
5 sufficient conditions or accommodation conditions that could
6 assure the safety for him to return to court.

7 THE COURT: All right. Let me -- let me just take
8 about five or ten minutes. I want to review the things that
9 you-all have presented today and consider this just for a few
10 more minutes, and then I'll -- I'll be back.

11 THE MARSHAL: All rise.

12 (A recess was taken from 2:39 p.m. to 2:52 p.m.)

13 THE COURT: Well, first as to the Court's authority
14 to make a decision on Mr. Daley's request for bond, I do think
15 that I have the ability to address the request in large part
16 because the decision from the magistrate judge in California,
17 I think it noted that at least in the bond report, that his
18 parents hadn't provided any information. And Ms. Lorish at
19 this point has put together, you know, a serious bond plan for
20 Mr. Daley. And I think -- I think that alone would provide a
21 factual basis for reconsideration.

22 I don't think that there is a basis to reconsider
23 the legal issue of having a detention hearing. I think a
24 magistrate judge in California made that determination, and
25 even if I could reconsider it I would agree with that judge's

1 decision that Mr. Daley does present a serious flight risk so
2 that I can consider and hold a detention hearing. And the
3 information there would be, you know, there were a couple of
4 failure to appears, but, you know, those are I think of a
5 lesser concern, that he was on probation while it's alleged
6 that he committed acts of violence in California, in
7 Huntington Beach, and also in Berkeley. There's some
8 international travel and some ties to groups outside of the
9 United States that are related to his participation in R.A.M.,
10 which is directly related to the alleged offenses here. And
11 then there's also some evidence about -- about Mr. Daley
12 having the wherewithal to cover financial tracks.

13 And I think that all of those things give me the
14 ability or would give me the ability, were I to reconsider the
15 magistrate judge's decision, to hold a detention hearing and
16 find that there at least is this threshold showing of a
17 serious risk of flight so that I can have a detention hearing.

18 So then that moves on to whether there are
19 conditions of release that I could place on you that would
20 reasonably assure me that you wouldn't be a danger to the
21 community or would present of a flight risk and that you
22 wouldn't show up to court.

23 Now, I think on the flight risk it's -- you know,
24 it's close, but I think Ms. Lorish has put together a plan
25 that could likely address the concerns that I have there. And

1 based on the factors that I have already identified, the plan
2 that Ms. Lorish has presented is that she offers Mr. Daley's
3 parents to serve as third party custodians and then have him
4 live in their home and work for his father in the construction
5 business and that there would be electronic monitoring and --
6 and a number of other factors.

7 And, you know, hearing Mr. Daley's mother testify
8 today, it shows me that his parents are very conscientious and
9 have gone to great lengths to help their son in the past and
10 to successfully help him when he was struggling with abuse to
11 controlled substances and that you-all took firm and difficult
12 steps then and followed through with them to really help him
13 and to put him in a -- in a much better situation and to...
14 And so that gives me some confidence that you-all would do
15 your best to make sure that he adhered to any conditions that
16 I would put on him.

17 Somewhat undermining that is that there's evidence
18 that was presented today that -- that Mr. Daley got things
19 from his parents, some suggestion that -- to help cover his
20 financial tracks for coming to Charlottesville, that he had
21 his mother unwittingly assist in that by using her credit card
22 and paying her back for the plane travel. Concealing that
23 information from her gives me some pause about -- about
24 whether the plan would be effective.

25 But the real -- the real concern, I think, and the

1 concern that pushes it over the edge for me is the -- is the
2 danger to the community that Mr. Daley presents. At this
3 point they are allegations, they are allegations in a
4 complaint. There have been proffers presented in open court;
5 there have been pictures in support of the proffers. And this
6 is evidence before the Court, and there certainly is going to
7 be --

8 Mr. Daley, I understand that Ms. Lorish has -- is
9 developing your case and defenses in your case at this point,
10 but, you know, what I have in front of me, the allegations and
11 some other evidence would show that -- that you were involved
12 in founding a group that at least in part the purpose was to
13 train for violence, train for combat. And it -- and this
14 violence would be directed towards people who had different
15 views than you, people of different genders, people of
16 different races, people -- different religious backgrounds.
17 And that there were two incidents in California while you were
18 on probation where this group that you're involved with was
19 involved with violence.

20 And then in August of 2017 there's, you know, the
21 travel across the country to engage in similar acts of
22 violence against similar people who had different views than
23 you. And that these events in Charlottesville occurred one
24 night on August 11 and then also the next day. And that
25 there's pictures of you actively hurting people. And then

1 that afterwards the acts of recruiting and promoting this
2 group encouraging others to -- to engage in this sort of
3 conduct continued.

4 And it's these things that I just -- the nature of
5 the offense and these continuous acts in a number of different
6 places that just tell me that I can't be reasonably assured
7 that there are any conditions that I could put on you that
8 would ensure the safety of the community. And so it's really
9 on the dangerousness that I do find that the detention is
10 necessary in this case.

11 Now, is there anything else that we need to take up,
12 Mr. Kavanaugh?

13 MR. KAVANAUGH: No, Your Honor.

14 THE COURT: Ms. Lorish?

15 MS. LORISH: Not today, Judge.

16 THE COURT: I will enter a written order on this as
17 well. Court will stand adjourned.

18 THE MARSHAL: By direction of His Honor, this United
19 States District Court stands adjourned for the day.

20 (End of FTR recording at 3:02 p.m.)

21 CERTIFICATE

22 I, Mary J. Butenschoen, certify that the foregoing
23 is a correct transcript from the record of proceedings in the
24 above-entitled matter.

25 /s/ Mary J. Butenschoen

4/12/2019